S.B. CIVIL WRIT PETITION NO.6492/2006.
Jai Prakash Soni Vs. State of Rajasthan & Anr.

Date of Order :: 17th December 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Kuldeep Mathur, for the petitioner.
Mr. Rameshwar Dave, Dy.G.A., for the respondents.

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BY THE COURT:

By way of this writ petition filed on 08.11.2006, the petitioner has questioned his prolonged suspension ordered as back as on 16.07.2003 for his involvement in Criminal Case No.93/2003.

Briefly put, the allegations against the petitioner are that while being posted at Municipal Corporation, Kota as Senior Accountant, he was involved in a trap laid by the Anti Corruption Bureau on 01.04.2003; the Bureau registered a case under Sections 13(1) (d) and 13(2) of the Prevention of Corruption Act against him and after investigation filed the challan before the competent court and the trial remains pending; the Government in its Local Self Department, by the order dated 16.07.2003 (Annex.1) proceeded to put the petitioner under suspension in exercise of its powers under Rule 13 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 ('the Rules of 1958'). It may be pointed out that the Department has proceeded to issue prosecution sanction under the order dated 28.02.2004.

The prayer made by the petitioner for review of the suspension order under Rule 34 of the Rules of 1958 was rejected by the impugned order dated 07.06.2006 (Annex.6). The petitioner made a representation with the submissions, inter alia, that various other employees similarly put under suspension were reinstated for the prolonged suspension being not justified and in his case too, continuous suspension for over 3 years was required to be reconsidered and revoked. The Department having failed to redress his grievance, the petitioner has invoked the extra-ordinary writ jurisdiction of this Court.

It is contended that the prayer for review of suspension order has been rejected on irrelevant considerations; that the challan has already been filed against the petitioner and there are no allegations of his tampering with the evidence nor there is any likelihood of his putting any obstacle in conclusion of the trial; that the criminal case has not proceeded further inasmuch as even the charges have not been framed yet and the petitioner is due for retirement on 31.12.2007; and that there is no reason to continue the petitioner under suspension particularly when the Department has not commenced any disciplinary proceeding and the conclusion of the criminal case is nowhere in sight.

During the course of submissions, learned counsel Mr. Kuldeep Mathur appearing for the petitioner has strenuously contended that even the criminal case launched against the petitioner is not based on strong grounds and rather the

Department had proceeded to issue prosecution sanction without considering the record for the allegation itself had been of recovering some currency notes from the trousers of one Surendra Singh, allegedly sitting in the office of the petitioner and no amount was recovered from the petitioner himself. Learned counsel submitted that in any case, admittedly, the Department has not commenced any disciplinary proceeding and so far trial of the criminal case is concerned, though the challan was filed as back as on 17.02.2005, till this date even charges have not been framed and now when the petitioner is to retire on 31.12.2007, there is no reason why he should be retired with suspension. Learned counsel has pointed out, by filing a synopsis of the proceedings in the trial of the criminal case, that after filing the challan on 17.02.2005, the petitioner appeared before the Special Court, ACD Cases, Kota on 08.03.2005, 18.07.2005, 18.08.2005, 25.10.2005, 01.02.2006, 03.08.2006, 23.11.2006, 12.04.2007 and 13.06.2007 but the matter was simply adjourned. It has been pointed out that the petitioner could not attend the court proceedings on 22.11.2007 for his having undergone angioplasty on 20.10.2007 at S.M.S. Hospital, Jaipur and was advised complete rest by the treating doctors and now, the next date fixed for the matter is 23.05.2008. Learned counsel has referred to and relied upon the decision of the Hon'ble Supreme Court in the case of P.L. Shah Vs. Union of India & Anr. : (1989) 1 SCC 546; and of this Court in the case

Prem Prakash Mathur Vs. State of Rajasthan & Ors. : 2005 (9) RDD 3962 (Raj.); Nand Lal Verma Vs. Stae of Rajasthan & Ors. : 1989 (1) RLR 601; and Shaukat Ali Vs. State of Rajasthan & Ors. : WLR 1992 (S) Raj 855.

Learned Deputy Government Advocate Mr. Rameshwar Dave even while defending the action of grant of prosecution sanction and continuing the petitioner under suspension could not dispute the fact that no departmental inquiry has been taken up against the petitioner and that charges have yet not been framed in the criminal case.

Having perused the material placed on record and having given a thoughtful consideration to the entire matter, this Court is clearly of opinion that in the fact situation of the present case, the prolonged suspension of the petitioner can only be said to be arbitrary and unjustified; and when the petitioner is due for retirement on 31.12.2007, it shall be a travesty of justice if the same would not be revoked now.

In the case of P.L. Shah (supra), the Hon'ble Supreme Court has said,-

> "An order of suspension is not an order imposing punishment on a person found to be guilty. It is an order made against him before he is found guilty to ensure smooth disposal of the proceedings initiated against him. Such proceedings should be completed expeditiously in the public interest and also in the interest of the government servant concerned."

In the case of Prem Prakash Mathur (supra), the petitioner concerned was facing suspension since the month of November 1992 and the respondents failed to show any reasonable cause for prolonged suspension and there was no allegation that he had in any way delayed the trial of the criminal case. In the circumstances, this Court observed and held,-

> "8. In the present case there is no allegation against the petitioner that he has in any way delayed the trial of criminal case. The only reason given by the respondents is that the circular dated 10.08.2001 restrains reinstatement of a Government servant by revoking his suspension till he gets acquittal from the criminal charges. In my considered opinion the circular dated 10.08.2001 cannot curtail the discretion vested with the appointing authority with regard to placing, continuing or revoking suspension of a Government servant. The appointing authority or the authority competent under Rule 13 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 is required to exercise the powers vested with him independently by taking into consideration all the facts, circumstances and the legal position existing.
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> 9. In the present case the petitioner is facing suspension since November 1992. His prolong suspension is certainly arbitrary, unreasonable and unjust. The respondents failed to show any reasonable cause for prolong suspension of the petitioner. The respondents to ensure that criminal trial continuing against the petitioner remain unhampered he may be posted and transferred at a place where he may not be in a position to create any obstacle in progress of the proceedings. However, I do not find any just and valid reason to continue the petitioner under suspension.
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> 10. I, therefore, accept this writ petition and quash the continued suspension of the petitioner. The respondents are directed to pass an order to revoke suspension of the petitioner within a period

> of 15 days, the petitioner serves a certified copy of this order upon Secretary to the Government of Rajasthan, Department of Personnel (Group-III), Jaipur."

Without commenting on the merits of the case pending against the present petitioner, this Court is of opinion that when there has not been even a remote allegation against the petitioner that he had in any manner delayed the progress of the criminal case or that his suspension was requisite for a fair trial of the case; and further more, when no departmental proceedings have at all been initiated against him, it would have been discreet and reasonable if the Department itself had revoked his suspension. As noticed above, from the month of February 2005 when the challan was put up, till 13.06.2007, the petitioner has continuously attended every date of hearing before the court concerned and then seems to have developed cardiac problems and had undergone angioplasty on 20.10.2007.

Even the charges in the criminal case have not been framed so far; and then, the petitioner is due for retirement on 31.12.2007. There appears no reason or justification from any angle that the petitioner is required to be continued on suspension.

Ordinarily, this Court would have remitted the matter to the authorities for reconsideration for the purpose of revocation of the suspension order but in view of the fact that the petitioner is due for retirement by the end of this month itself, it appears

appropriate to direct the respondents to pass an order of revocation of the suspension of the petitioner within seven days from today.

Accordingly, this petition succeeds to the extent indicated above and is allowed. Continuous suspension of the petitioner is held arbitrary and unreasonable. The respondents shall issue necessary orders for revocation of suspension of the petitioner within seven days from today. No costs.

(DINESH MAHESHWARI),J.

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